

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

UNITED STATES OF AMERICA)	
)	No. 1:04-CR-138
v.)	
)	Chief Judge Curtis L. Collier
JOSEPH SWAFFORD and)	
JES, INC., d/b/a BROADWAY HOME)	
AND GARDEN CENTER)	

ORDER

Before the Court is the *pro se* motion of defendant JES, Inc., d/b/a/ Broadway Home and Garden Center (“JES”) filed by its sole stockholder, defendant Joseph Swafford (“Swafford”) on January 10, 2007 (Court File No. 220). This motion requests (1) court-appointed appellate counsel, (2) leave to proceed *in forma pauperis* on appeal, and (3) a reasonable extension of the time in which to perfect an appeal (*id.* at ¶¶ 1-3). On January 22, 2007, United States Magistrate Judge Susan K. Lee issued a report and recommendation (“R&R”) (Court File No. 222) addressing JES’s motion, as well as a motion by JES to dismiss its current counsel due to JES’s lack of funds (Court File No. 219) and a motion by JES to consolidate its appeal with defendant Swafford’s appeal (Court File No. 218).

On February 8, 2007, JES filed a statement of objections (Court File No. 224) to the R&R. This Court notes the objections were untimely as having been filed more than ten days after the R&R was issued. As the R&R itself stated, failure to file objections within the time specified waives JES’s right to appeal this Court’s order. *Thomas v. Arn*, 474 U.S. 140, 149 n.7 (1985). Furthermore, this Court need not review the R&R *de novo* under the stricture of 28 U.S.C. § 636(b)(1)(C) if objections to it are frivolous, conclusive and general. *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir.

1986). This Court finds JES's objections are frivolous, as they cite inapplicable case law and fail to address the controlling law, made clear by the United States Supreme Court in *Rowland v. California Men's Colony*, 506 U.S. 194, 197-98, 201-02 (1993) (holding only natural person may be granted *in forma pauperis* status and a corporation cannot appear in federal court except through its attorney).

This Court **ACCEPTS** and **ADOPTS** the magistrate judge's Report and Recommendation (Court File No. 222) pursuant to 28 U.S.C. § 636(b)(1)(C). Accordingly,

- (1) JES's request to proceed *in forma pauperis* on appeal is **DENIED**;
- (2) JES's request that this Court appoint appellate counsel is **DENIED** without prejudice to JES's right to raise this issue before the United States Court of Appeal for the Sixth Circuit;
- (3) JES's request for an extension of time to perfect an appeal is **STRICKEN** as **MOOT**; and
- (4) JES's motion for joinder or consolidation of the appeals is **DENIED** without prejudice to JES's right to raise this issue before the Sixth Circuit.

SO ORDERED.

ENTER:

/s/
CURTIS L. COLLIER
CHIEF UNITED STATES DISTRICT JUDGE